

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

WILBUR L. MARTIN, #242130,

Petitioner,

v.

ACTION NO. 2:05cv640

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction on September 20, 1996, in the Circuit Court for the City of Chesapeake, Virginia, for rape and sodomy. Petitioner was sentenced to serve twenty-five (25) years in prison for each charge, with ten (10) years suspended on each charge.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the Magistrate Judge was filed on July 25, 2006, denying Petitioner's motion for an evidentiary hearing and recommending dismissal of the petition. By copy of the report, each party was

advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. In lieu of filing objections, Petitioner indicated his intention to appeal the Magistrate Judge's Report and Recommendation. On August 3, 2006, the Court received Petitioner's Notice of an Appeal [sic] United States Magistrate Judge's Report and Recommendation. On December 21, 2006, the United States Court of Appeals for the Fourth Circuit issued an unpublished opinion dismissing Petitioner's appeal for lack of jurisdiction noting: "This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders . . . The order Martin seeks to appeal is neither a final order nor an appealable interlocutory or collateral order." On January 16, 2007, this Court received a certified copy of the Judgment of the United States Court of Appeal for the Fourth Circuit dismissing Petitioner's appeal.

The Court, having reviewed the record, hereby ADOPTS AND APPROVES the findings and recommendations set forth in the report of the United States Magistrate Judge filed on July 25, 2006, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE as the claims are barred by the statute of limitations. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the

Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

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/s/  
HENRY COKE MORGAN, JR.  
SENIOR UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

February 12, 2007